

SCANNED

US District Court
Eastern District of New York (Central Islip)

) Craig Cunningham
) Plaintiff, Pro-se
)

) v. Civ Action 21-cv-02443-(GRB-ARL)

)
) Big Think Capital, INC
) Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 02 2022 ★

LONG ISLAND OFFICE

Plaintiff's Response in Opposition to the Defendant's letter motion and Motion to Strike Docket (37)

1. To the Honorable US District Court:
2. Defendant's motion is improperly formed, is a rambling, vague general diatribe about no specific sanctionable conduct by the Plaintiff.
3. Defendant's Letter Motion is improperly formed and thus should be stricken
4. First, the Defendant's letter fails to include an order for the court to sign and on that basis alone is improperly formed and violates
5. Defendant's motion fails to include a certificate of Service as the Local rules and Federal rules of civil procedure require.
6. Defendant's letter motion fails to specify what relief is sought or what purported wrongdoing took place.
7. Defendant's letter begins complaining about an accidental, wrong number call when the Plaintiff was watching Monday Night Football on 11/15/2021 and intended to call call one of his friends in Claifornia whom Plaintiff knew would be up at only 7PM Pacific time and regularly engages in Fantasy football. Plaintiff had Jeff Ettinger's phone number saved as "Big Think Attorney" in his cell phone, but an attorney friend whose number

was saved under the name “Big Mike” to discuss the current NFL game that was on. Clearly the Plaintiff hit the wrong name and mistakenly dialed the wrong person. Its an innocent mistake that could have happened to anyone fumbling with their cell phone while watching football in the dark and celebrating, but apparently the defendants think an accidental misdial is inappropriate conduct. Plaintiff has rectified this by not saving the Defendant’s number in his cell phone.

8. Ironically, the Defendants found a single, wrong number call to be so offensive that they decided to file a motion for sanctions regarding it, when their client has deliberately and knowingly called and texted the Plaintiff over 100 times even after knowing the Plaintiff was represented by counsel and had filed multiple lawsuits objecting to the repeated and harassing calls and text messages by Defendant Big Think Capital.

9. Apparently, the Defendant’s counsel thinks his right to privacy trumps the Plaintiff’s right to privacy and based on a single, accidental call.

10. Defendant’s attempt to sanction the Plaintiff about purported actions that took place with prior defense counsel are improper

11. Defense counsel then vaguely continues on about some general and unsubstantiated complaints by the predecessor attorney that they found apparently not problematic enough to bring to the court or the Plaintiff’s attention. Defendant’s then go on to complain that the Plaintiff called his office, which is what litigants are required to do as discovery and other issues come up throughout the case, particularly when a party is deficient in their discovery obligations, a meet and confer is required to take place before motion practice can occur with the court in an attempt to resolve the issue before seeking court intervention.

12. Defense counsel then claims the Plaintiff should be punished for bringing dozens of lawsuits throughout the country, which is a clear attempt to restrict the Plaintiff's right to due process and a constitutional law violation.

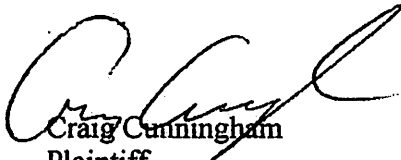
13. Then the Defendant's continue on complaining that the Plaintiff has not served a rule 26 disclosure, which he has. Defendants then go on to claim that the Plaintiff has not served discovery demands, which he has.

14. Defendant then goes on to allege the Plaintiff has not responded to their discovery demands, which is factually incorrect. No discovery demands were served upon the Plaintiff, nor were they overdue at the time the Defendants wrote this bad faith letter motion to the court. Upon actually being served with discovery demands by the Defendants he promptly responded.

15. Defendants are simply trying to mislead the court in this motion and seek discovery sanctions without giving the court any reason or rule that has been violated. As an example of this misconduct and misrepresentations, consider the email Ex B which constitutes this very letter motion to the court in which the defendant's claim that the Plaintiff's discovery was served and overdue emailed at 10AM to the Plaintiff on November 16, 2021 with Ex A where the defendants first and only service of discovery to the Plaintiff, also on November 16, 2021 at 3:25 PM, some 5 hours after he wrote a bad faith motion to the court claiming the Plaintiff's discovery was served on the Plaintiff and overdue.

16. Clearly, the defendants lied to the court in their letter motion and misrepresented to the court that discovery was served and overdue at 10AM on the same day when they had not even served it upon the Plaintiff until some 5 hours later.

17. Defendant's Letter motion should be stricken for procedural errors and denied in full.



Craig Cunningham
Plaintiff,

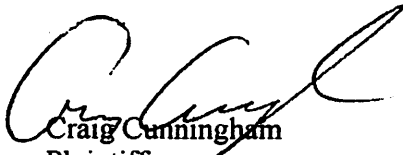
3000 Custer Road, ste 270-206 Plano, Tx 75075 615-348-1977

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)
) Big Think Capital, INC
) Defendants

Plaintiff's Certificate of Service

The Plaintiff hereby certifies a true copy of the foregoing was mailed and served upon the defendants in this case via their attorney via email and regular mail.


Craig Cunningham
Plaintiff,

3000 Custer Road, ste 270-206 Plano, Tx 75075 615-348-1977

Big Think

From **Jeffrey Ettenger** <jse@selawny.com>
To **'Craig'** <projectpalehorse@hushmail.com>
Sent Tuesday, November 16, 2021 at 3:25 PM
Forwarded **Yes**
Encrypted **No**
Signed **No**
Attachments image001.jpg, image002.png, First Set of Interrogatories.docx, First Set of Requests for Admission.docx, First Set of Requests for Production.docx

Here are the discovery demands in word format as requested

Regards,

Jeffrey Ettenger, Esq.

Member

Schwartz Ettenger, PLLC

445 Broad Hollow Road, Suite 205

Melville, New York 11747

Office: 631-777-2401 Ex. 22

Cell: 516-497-2606

Fax: 631-777-2402

JSE@selawny.com

Check Out Our Blog at www.SchwartzEttenger.com



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FW: 11 21 to court

From **Jeffrey Ettenger** <jse@selawny.com>
To **'Craig'** <projectpalehorse@hushmail.com>
Sent Tuesday, November 16, 2021 at 10:31 AM
Encrypted **No**
Signed **No**
Attachments image001.jpg, image002.png, 11.16.21.Ltr to Court.pdf

Please see attached

Regards,

Jeffrey Ettenger, Esq.

Member

Schwartz Ettenger, PLLC

445 Broad Hollow Road, Suite 205

Melville, New York 11747

Office: 631-777-2401 Ex. 22

Cell: 516-497-2606

Fax: 631-777-2402

JSE@selawny.com

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